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D E C I S I O N
of 6 December 2000

Case Number: T 0789/98 - 3.2.6

Application Number: 91911584.0

Publication Number: 0532649

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Language of the proceedings: EN

Title of invention:
C-fold releasable Wapper

Patentee:
THE PROCTER & GAMBLE COMPANY

Opponent:
SCA Hygiene Products AB

Headword:
-

Relevant legal provisions:
EPC Art. 54, 56, 123

Keyword:
"Amendments - added subject-matter (no)"
"Novelty (yes)"
"Inventive step (yes)"

Decisions cited:
T 0056/87

Catchword:
-



Case Number: T 0789/98 - 3.2.6

D E C I S I O N
of the Technical Board of Appeal 3.2.6
of 6 December 2000

Appellant: SCA Hygiene Products AB
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Decision under appeal: Interlocutory decision of the Opposition Division
of the European Patent Office posted 8 June 1998
concerning maintenance of European patent
No. 0 532 649 in amended form.

Composition of the Board:

Chairman: P. Alting van Geusau
Members: H. Meinders
M. Tardo-Dino

Summary of Facts and Submissions

- I. The appeal is from the interlocutory decision of the Opposition Division of 23 April 1998, sent to the parties on 8 June 1998, maintaining European Patent No. 0 532 649 in amended form.
- II. In its decision the Opposition Division considered that the subject-matter of claim 1 as granted lacked inventive step, but that the subject-matter of claim 1 as amended in the first auxiliary request presented at the oral proceedings before it fulfilled the requirements of novelty and inventive step. In particular it considered the following documents:

D1: US-A-4 735 316

D2: US-A-4 765 477

D4: EP-A-0 357 000

D5: US-A-4 285 343

D6: US-A-4 608 047

D9: US-A-4 556 146.

Document D11 (US-A-3 973 567), submitted late in connection with a second auxiliary request, was not admitted into the proceedings as the Opposition Division already considered the first auxiliary request allowable.

III. Against this decision an appeal was filed by the Appellant (Opponent) by facsimile on 10 August 1998, with payment of the appeal fee on that same day. The statement of grounds of appeal was filed by facsimile on 19 October 1998.

IV. Oral proceedings were held on 6 December 2000, in which the Respondent (Patentee) requested that the decision under appeal be set aside and the patent maintained with claim 1 in a further amended form:

"1. A sanitary napkin (20) having a longitudinal centerline (36), two longitudinal (30) and two lateral (32) side margins, said sanitary napkin (20) comprising:

a liquid pervious topsheet (22)

a liquid impervious backsheet (24) at least partially peripherally joined to said topsheet (22) and having opposed inwardly and outwardly oriented faces;

means (40) for attaching said sanitary napkin (20) to an undergarment, said means (40) being provided by at least one adhesive patch (40a) joined to said outwardly oriented face of said backsheet (24);

an absorbent core (26) intermediate said topsheet (22) and said backsheet (24);

flaps (28) extending from each of said longitudinal side margins, wherein said flaps are folded over said topsheet, each of said flaps (28) comprising an attachment means (40) which are pressure sensitive adhesive patches (40b), each of said patches being on

the face of said flaps (28) which is coextensive with said backsheet (24);

and said sanitary napkin being characterised in that it further comprises a releasable wrapper (34) having one end juxtaposed with a lateral side margin (32) of said sanitary napkin (20) and having two longitudinal side margins; and wherein

said releasable wrapper (34) is wrapped around said longitudinal side margins (30) of said sanitary napkin (20) in a C-fold said releasable wrapper providing separation from said attachment means (40) by a release coating, at least in the areas of the adhesive patches on the backsheet (40a) and said patches (40b) on the face of said flaps (28) which is co-extensive with said backsheet;

and wherein said sanitary napkin (20) is folded inwardly with respect to said topsheet (22) about two spaced apart, laterally oriented foldlines to produce a folded arrangement having three trisections."

The description of the patent was further amended so as to acknowledge D5 as closest prior art, by an insertion proposed for column 1, line 37.

The Appellant requested that the decision under appeal be set aside and the patent revoked.

V. The arguments of the Appellant can be summarised as follows:

D5 constituted the closest prior art, disclosing a sanitary napkin with side flaps. It was generally known

to individually wrap such napkins, for the sake of discreetness, and in that case also the package should be folded in three so as to be as compact as possible. Both the wrapping and the folding steps were common practice for the person skilled in this field, which was for instance illustrated by D1 and D2 on the one hand and by D4, D6 or D9 on the other.

D1 as well as D2 disclosed release coating on the wrapper at the location where the adhesive patch on the backsheet of the napkin would be, when wrapped. D1 mentioned specifically the lower cost of using release coatings as opposed to releasable tabs on the adhesive patches. A skilled person using the wrapper as disclosed in D1 or D2 would therefore additionally apply a releasable coating at the location where the adhesive patches on the flaps would be when such a napkin was wrapped, doing away with the release tabs on those patches as well.

The wrapped napkin of D1 or D2 was only folded in two sections, but it would be obvious for the skilled person, if the package needed to be more compact than that, to fold it in three trisections, as was illustrated for instance by D4, D6 or D9.

VI. The Respondent's submissions can be summarised as follows:

It was by no means evident to package sanitary napkins individually; a plurality of unwrapped napkins put together in a bag or a box was also common. That was what the mention of "packaging" in the abstract of D5 referred to. In assessing inventive step it was not permissible to generalise individual features of prior

art disclosures and consider each of them to present a separate general technical teaching. Rather one should consider what the actual disclosures contained as a complete technical teaching and whether the skilled person would consider applying such a teaching in its entirety. In that respect the skilled person would not consider D1 when starting from the napkin disclosed in D5. The latter disclosed the use of adhesive patches on the flaps which would stick to the release coating of the wrapper when wrapped and this clearly prevented the latter from being turned inside out as presented in D1. It was in the same way not evident to use the wrapper presented in D2 and provide it with a releasable coating at the locations of the flap adhesive patches, because this required further technical changes to the wrapper. Further, there was no particular reason to apply triple folding to such a package. This was not the only available means of reducing the size of the package; double and quadruple folding existed as well. The fact that the documents D4, D6 or D9 did not relate to triple folding of napkins **with side flaps**, which presented particular technical problems in folding, should not be ignored.

All in all the skilled person was not led in an obvious manner by the cited prior art to the sanitary napkin as claimed, which therefore was based on an inventive activity.

Reasons for the Decision

1. The appeal is admissible.

2. *Amendments (Article 123 EPC)*

The subject-matter of claim 1 as granted has been further limited by the addition of the following features:

- the sanitary napkin comprises flaps extending from the longitudinal side margins, having been folded over the topsheet, having adhesive patches on the face of the flaps which is coextensive with the backsheet,
- the adhesive patches are for attaching the napkin to an undergarment,
- the wrapper has a release coating at least in the areas of the adhesive patches on the backsheet and on the flaps.

The original application documents provide a basis for these amendments in page 4, line 29 to page 5, line 20 and page 11, line 7 to page 12, line 33.

The amendments therefore comply with the requirements of Article 123(2) and (3) EPC.

3. *Late filed document D11*

The Opposition Division saw no reason to admit this document filed after the expiry of the opposition period, as it was brought forward against a feature added to claim 1 according to an auxiliary request which needed not to be decided upon as a higher ranking request was considered allowable.

In the present appeal proceedings the Appellant requested admitting this document and argued lack of

inventive step on the base of it, now in respect of the subject-matter of the claims in the form as maintained by the Opposition Division.

Also the Board refuses to admit this document in the appeal proceedings as it is no more relevant than the other available documents. Neither does it concern the wrapping of sanitary napkins with flaps, nor folding in three trisections of a napkin, nor of a C-fold wrapper as claimed. The presence of a release coating on the wrapper at the location of adhesive patches on the napkin, in place of release tabs, is already known from D2 for the same kind of napkins, combined with a C-fold wrapper.

4. *Novelty (Article 54 EPC)*

Novelty was not an issue between the parties in these appeal proceedings; as none of the documents available in the file on its own discloses all features of claim 1, the Board is satisfied that the subject-matter of claim 1 is novel.

5. *Inventive step (Article 56 EPC)*

5.1 The subject-matter of claim 1 is concerned with the individual wrapping of sanitary napkins having side flaps folded onto the topsheet and provided with adhesive patches on their backsheet, as well as with the folding up of such wrapped napkins. The Board considers D5 to be the closest prior art as it concerns also a sanitary napkin with such flaps. It provides the proper starting point for discussing inventive step, as it is closest to the actual problems encountered when wrapping and folding up a napkin with its side flaps

folded onto the topsheet.

In this respect D6 is more remote prior art, even though it concerns a sanitary napkin with flaps, which is folded in three trisections. This sanitary napkin namely does not involve flaps folded over the topsheet, but uses the flaps to close up the package formed by first folding the two ends of the absorbent core inwardly, onto the central part. In such a situation the skilled person would not be prompted additionally to provide a wrapper, as the absorbent core inside the napkin is already protected by the side flaps as well as by the ends folded over it, the ensemble forming a discreet package.

The other available documents concern wrapping and/or folding of sanitary napkins without flaps, which, already for this reason alone, cannot provide the proper starting point.

- 5.2 The sanitary napkin disclosed in D5 is made more compact in that the side flaps are folded over the topsheet of the napkin, which because of the reduction in width obviously makes it easier to package this napkin together with a number of further napkins. However, if the user wishes to take less than the whole package along in her purse or bag, the napkins would be susceptible to soiling. They can further hardly be handled discreetly as they are not individually packed and still have a relatively large size as only the flaps have been folded inward.

When starting from the napkin disclosed in D5 the object underlying the subject-matter of claim 1 under consideration is therefore to provide an individually

wrapped sanitary napkin in a relatively small package guaranteeing discreetness and cleanness (see the patent in suit, column 1, lines 48 to 58).

5.3 The subject-matter of current claim 1 is principally distinguished from the sanitary napkin disclosed in D5 by the following features:

- the sanitary napkin comprises a releasable wrapper wrapped around the longitudinal side margins of the napkin in a C-fold, the wrapper having a release coating providing separation from the adhesive patches on the backsheet and on the face of the flaps which is coextensive with the backsheet,
- the napkin is folded up inwardly with respect to the topsheet about two spaced apart, laterally oriented foldlines to produce a folded arrangement having three trisections.

These features provide for the sanitary napkin to form a discreet relatively small package after having been wrapped in a wrapper which protects the inside of the napkin.

5.4 The Appellant argued that it was common practice for the skilled person on the one hand to wrap napkins in a C-fold wrapper with release coating on its inner face at the locations where any adhesive patches of the napkins would be when wrapped, and on the other to fold napkins in three trisections. As supporting evidence the Appellant presented documents D1 or D2 for the C-fold wrapping of napkins with a release coated wrapper and D4, D6 or D9 for the folding of napkins in three

trisectiions.

5.5 The Board is of the opinion that in respect of the napkin of the patent in suit the features mentioned above as distinguishing the subject-matter of claim 1 from the closest prior art D5 should not be considered separately. It is one thing to fold in three trisectiions a napkin provided with flaps (the latter having an influence on the way of folding of the napkin), it is another to fold such a napkin when additionally a wrapper folded over the flaps is involved. Therefore it is not a question whether these two features, each on their own, are known in or obvious from the prior art, but whether the skilled person would consider incorporating them together in the napkin disclosed in D5.

5.6 The Appellant considered D1 and D2 to illustrate the standard practice of wrapping a napkin in a C-fold, release coated wrapper and D4, D6 and D9 to show the standard folding of a napkin in three trisectiions.

5.7 It is established case law of the Boards of Appeal that the technical disclosure in a prior art document should be considered in its entirety, as it would be done by a person skilled in the art and that it is not justified arbitrarily to isolate parts of such a document from their context in order to derive from them technical information which would be distinct from or even in contradiction with the integral teaching of that document (see also T 56/87, OJ 1990, 188, Reasons point 3.1).

In respect of the folding in three trisectiions of a napkin **with flaps** therefore the only document possibly

providing support for the assertion that it was general practice to fold such napkins in three trisections is D6, because D4 and D9 do not relate to triple folding of napkins **with flaps**.

However, document D6 teaches away from the invention: the flaps 28 are namely not folded over the topsheet, but one end of the **napkin** is folded over the topsheet and the other end thereover, the package then being closed off by the flaps being folded over the latter mentioned end and fixed to each other. Thus D6 cannot provide a basis for the contention that it was normal practice to fold napkins with flaps in three trisections, **beginning** with folding the **flaps** over the topsheet.

5.8 In respect of the use of a C-fold wrapper having a release coating at the locations where adhesive patches of the napkin will be located when the napkin is wrapped, the Board observes that neither D1 nor D2 relate to the wrapping of napkins with flaps folded over the topsheet, the backsheet of the flaps being provided with adhesive patches.

5.9 Even if one accepted that the teaching of wrapping a napkin in a C-fold wrapper which has release coating at the location where the napkin has adhesive patches (on the backsheet) could be easily adopted for wrapping a napkin with flaps folded over the topsheet, the flaps also having adhesive patches, the following, however, would apply.

The teaching of the relevant embodiments disclosed in D1 and D2 is not limited to wrapping a napkin in a C-fold wrapper that has release coating at the location

where the napkin has an adhesive patch, but also includes closing the package by folding it in two and locking it in that position by means of two glue lines, each being folded onto itself.

The further teaching of D1 concerns the use of a welding line to close off the package at the non-folded end. To unpack the napkin this part is torn off and the package is turned inside out. The glue lines stick to each other and guarantee that the wrapper remains a bag when turned inside out.

The napkin disclosed in D2 is unpacked by tearing loose the glue lines. There is no welding line closing off the non-folded end.

The integral teachings of D1 and D2 concern specific solutions each involving a number of inter-related features. No lead is derivable from either document to consider parts of these solutions in isolation.

5.10 In the Board's opinion the skilled person would not apply the integral teaching of D1 to the napkin with flaps disclosed in D5, as the latter would require further release coating at the location of the adhesive patches on the flaps, which would lie inside the package when the napkin is folded in two. These would substantially inhibit or even render it impossible to turn the package inside out while unpacking the napkin. Discussing the question whether the skilled person would fold the napkin in three trisections instead of the two sections suggested by D1 is then pointless.

5.11 If the skilled person would apply the integral solution presented by D2 to the napkin of D5 he would fold the

napkin in two, not in three sections. Folding the napkin wrapped according D2 in three sections would form a further technical step, involving further technical considerations which are not obvious from the available prior art. Namely, the question would have to be solved how the package could remain closed in a triple folded state with the help of the glue lines. There are no indications in the prior art how to solve that problem.

5.12 Therefore the available prior art cannot provide support for the contention that the features distinguishing claim 1 from D5 are the result of common technical practice in this field. Furthermore, the disclosures as such do not contain sufficient indications rendering the claimed combination of these features obvious.

6. In the Board's judgement the solution to the technical problem underlying the patent in suit as defined in present independent claim 1 is inventive. Therefore this claim as well as the dependent claims 2 to 6, defining preferred embodiments of the sanitary napkin of claim 1 in accordance with Rule 29(3) EPC, can form the basis for maintenance of the patent (Article 52(1) EPC).

The amended description and the drawings of the patent in suit are in agreement with the present wording and scope of these claims.

*Thus, taking account of the amendments made by the Appellant, the patent and the invention to which it relates meet the requirements of the EPC.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the first instance with the order to maintain the patent on the basis of:

claim 1 presented during the oral proceedings of 6 December 2000,

claims 2 to 6, description columns 1 to 16 and drawings (Figures 1 to 6) as upheld by the opposition division, together with the insertion for the description, after line 37 of column 1, filed during the oral proceedings of 6 December 2000.

The Registrar:

The Chairman:

M. Patin

P. Alting van Geusau